IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE THIRD DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

-

WRIT PETITION NO : 14810 & 21593 of 2004

W.P.No.14810 of 2004: -

Between:

1) Uday Waghray, S/o. Eknath Waghray,
R/o.H.No. 5-1-705, Amritnagar Colony, Bank Street,

Hyderabad.
2) Hema Waghray, D/o. Eknath Waghray,
R/o.H.No. 5-1-705, Amritnagar Colony, Bank Street,

Hyderabad.

.... PETITIONERS

AND

1 The Prudential Coop. Bank Ltd., 8-1-381, R.P. Road,

Secunderabad, rep by its Managing Director
2 The Prudential Coop. Bank Ltd.,
rep by its Asst. General Manager, R.P. Road,

Secunderabad
3 The Prudential Coop. Bank Ltd., rep by its District

Cooperative Officer, Hyderabad (Urban District)

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue any appropriate Writ, Order or direction preferably a writ in the nature of Writ of Certiorari calling for the records relating to Notice of sale of immovable property issued in E.P No. 12/2003(CT)L.F. No. H. 50/40 dt. 14-7-2004 made in Form No. 8 and Form No. 9 on the file of the 3rd respondent and to quash the same as being illegal, arbitrary and violative of Article 14 of the Constitution of India and consequently stay all further proceedings including public auction of the property and pass such other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

Counsel for the Petitioners: MR.P.VENUGOPAL

Counsel for the Respondents: Mr.S.Ashok Anand Kumar.

W.P.No.21593 of 2004:-

Between:

Smt. Shoba Rani, W/o. M. Ravinder Reddy,
R/o.H.No. 5-1-701, Amrit Nagar, Beside Central Bank,
Bank Street, Koti, Hyderabad.

.... PETITIONER

AND

1 The Prudential Cooperative Bank Limited, 8-1-381, R.P.

Road, Secunderabad, Rep. by its Managing Director.
2 The Prudential Cooperative Bank Limited, Rep. by its

Assistant General Manager, R.P. Road, Secunderabad.
3 The Prudential Cooperative Bank Limited, Rep. by its District

Cooperative Officer, Hyderabad (Urban) District.
4 Cooperative Sub Registrar/Sale Officer, The Prudential

Cooperative Bank Limited, R.P. Road, Secunderabad.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus, or any other appropriate Writ, order or direction, declaring the action of the respondents in not registering and handing over the property purchased by the petitioner in the public auction and withholding the amount of Rs.18.92 lakhs of the petitioner which was deposited pursuant to the public auction

(sale) in spite of petitioner requesting for refund of the amount, as being arbitrary, illegal and violative of Art.14 of the Constitution of India and consequently direct the respondents to forthwith release the amount of Rs.18.92 lakhs to the petitioner which was deposited pursuant to the public auction (sale) by cancelling the sale and pass such other order or orders as may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.A.SANJAY KISHORE

Counsel for the Respondents: MR.S.ASHOK ANAND KUMAR

The Court made the following:

COMMON ORDER: -

Since these two writ petitions are connected with each other, they are being disposed of through a common order. W.P.No.14810 of 2004 is filed by the loanees from the first respondent bank. They obtained a loan of Rs.4 lakhs on 11.11.1998. They claim to have made part payments. However, since they committed default, the respondents initiated proceedings to put the mortgaged property to sale. Accordingly, notice in Form No.8 was issued on 14.07.2004. The auction was ultimately held on 23.08.2004. In the auction, the petitioner in W.P.No.21593 of 2004, emerged as the highest bidder for a sum of Rs.18,92,000/-. She is said to have deposited the entire amount.

2. In the meanwhile, W.P.No.14810 of 2004 was filed and this Court passed an interim order on 28.08.2004, granting stay of further proceedings, on condition that the petitioners therein deposit a sum of Rs.3.5 lakhs. The condition is said to have been complied with. In view of the stay granted by this Court, the respondent bank was handicapped from proceeding further, or to finalize the sale. W.P.No.21593 of 2004 is filed, seeking direction to the respondents therein, to refund the sale consideration, since confirmation of the sale became impossible.

3. Heard learned counsel for the petitioners in both the writ petitions and the learned Standing Counsel for the respondent bank.

4. The petitioners in W.P.No.14810 of 2004 did not dispute the fact that they have obtained loan from the respondent bank. Though there is some controversy as to the exact amount, still to be recovered from them, the fact remains that they are due. No

exception can be taken to the steps taken by the respondents in putting the property to sale. In pursuance of the orders passed by this Court on 20.8.2004, the petitioners have deposited a sum of Rs.3.5 lakhs. The impugned sale notice discloses that a sum of about 7 lakhs was due. This Court cannot decide as to the exact amount, which remains unpaid by the loanees. If they are of the view that the amount paid by them already constitutes substantial repayment, and if any amount other than the one indicated in the sale notice remains unpaid, it is for them to place necessary material before the Bank and to repay the amount, which emerges as due. Learned counsel for the petitioners in W.P.No.14810 of 2004 submits that his clients are prepared to make such payment within four weeks from the date of intimation. In view of this development, it has almost become impossible, for the sale to be proceeded with. At the same time, the substantial amount paid by the auction purchaser, in W.P.No.21593 of 2004, cannot be permitted to be retained by the Bank, and that she shall be entitled to be refunded the same.

5. This Court is of the view that the petitioner in W.P.No.21593 of 2004 is not only entitled to be refunded the entire amount deposited by her, but also to be compensated for retention of such huge amount for a period of 3 ½ months. Similarly the petitioners in W.P.No.14810 of 2004 shall be entitled to submit a representation together with necessary material to the respondent bank for the purpose of determining the amount to be paid by them, and would be under obligation to pay such amount, within four weeks from the date of intimation. Hence,

a. W.P.14810 of 2004 is disposed of directing that the petitioners therein shall be entitled to submit necessary representation, together with supporting material to the respondents therein for the purpose of determining the amount still to be paid by them, within four weeks from today. On receiving the same, the respondents shall intimate the exact amount, which remains unpaid, and the petitioners shall be liable to pay that amount, within four weeks from the date of receipt of intimation. In default, it shall be open to the respondents therein to proceed against the mortgaged property.

b. W.P.No.21593 of 2004 is allowed directing the respondents to refund the

amount deposited to the petitioner as well as a sum of Rs.20,000/-, within one week from the date of receipt of order. The amount of Rs.20,000/- to be paid by the bank to the petitioner in this writ petition, shall form part of the liability of the petitioners in W.P.No.14810 of 2004.

c. There shall be no order as to costs.

_____

L.NARASIMHA REDDY, J

Dated: 03rd December, 2004

RAR

To

1 The Prudential Cooperative Bank Limited, 8-1-381, R.P.

Road, Secunderabad, Rep. by its Managing Director.
2 The Prudential Cooperative Bank Limited, Rep. by its

Assistant General Manager, R.P. Road, Secunderabad.
3 The Prudential Cooperative Bank Limited, Rep. by its District

Cooperative Officer, Hyderabad (Urban) District.
4 Cooperative Sub Registrar/Sale Officer, The Prudential

Cooperative Bank Limited, R.P. Road, Secunderabad.

5 2 CCs to G.P for Cooperation, High Court Buildings, Hyd.(OUT)

6 2 CD copies.